IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 357 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJU @ BIMALDAS SINDHI

Versus

STATE OF GUJARAT

Appearance:

MRS SHILPA J UNWALLA for Petitioner

MR KG SHETH APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/05/2001

CAV JUDGEMENT

1. The petitioner abovenamed, being original accused no. 5 in Sessions Case No. 77/2000 pending before the City Sessions Court at Ahmedabad, has preferred this Criminal Revision Application under Section 397 of the Code of Criminal Procedure, 1973 (for short "Code"),

challenging the order dated 29th August, 2000 recorded by the learned City Sessions Judge, Court No. 1, at Ahmedabad, dismissing the Criminal Revision Application No. 1648/2000 in Sessions Case No. 77/2000, which was

filed by the present petitioner for transferring the said sessions case No. 77/2000 on file of the learned Additional City Sessions Judge, who has framed the charge against the petitioner and other accused persons for the offences punishable under Sections 302 read with 34, 114, 201 of Indian Penal Code.

2. It seems to be the case of the present petitioner that the aforesaid sessions case being Session Case No. 77/2000 is pending in the City Sessions Court at Ahmedabad. It has also his case that the charge was framed by the learned Additional Sessions Judge of Court no. 2 for the aforesaid offences. That the present matter was placed before another Additional Sessions Judge for trial according to law. The petitioner abovenamed preferred aforesaid application stating that since the charge was framed in the aforesaid matter by the learned Additional Sessions Judge of Court no. 2, the trial ought to be conducted by that Additional Sessions Judge and not by any other Additional Sessions Judge of the City Sessions Court at Ahmedabad. Therefore, the petitioner prayed that not to the transfer the said sessions case for being tried by the learned Additional Sessions Judge, who has not framed the charge as aforesaid against the petitioner and other accused person and to transfer it to the additional City Sessions Judge, who has framed charge.

3. The learned City Sessions Judge after hearing the learned advocates for the parties, dismissed the said application of the petitioner.

4. Feeling aggrieved by the said order of the learned City Sessions Judge, the petitioner has preferred this Criminal Revision Application before this Court.

5. It is mainly contended that the charge was framed by the Additional Sessions Judge and therefore, the trial has commenced against the petitioner and other accused persons in aforesaid Sessions Case No. 77/2000. That once the trial commences, then in that case the learned Sessions Judge could not make over the case or transfer the case to any other Sessions Judge for trial according to law. That therefore, on one hand, transfer of the aforesaid sessions case before any other Sessions Judge of the City Sessions Court at Ahmedabad is illegal. That

on the other hand, it was again illegal not to place the said case for trial before the learned Additional Sessions Judge, who had framed the charge against the petitioner and other accused persons. It is therefore contended by the petitioner that the aforesaid order of the learned City Sessions Judge is illegal and erroneous and deserve to be set aside.

6. The petitioner therefore, prayed that the present revision application be allowed and judgement and order of the learned Additional Sessions Judge be set aside and the aforesaid sessions case No. 77/2000 be ordered to be placed before the learned Additional Sessions Judge, who framed the charge against the petitioner and other accused persons.

7. On receipt of the aforesaid petition, notice was issued. Mr. K.G. Sheth, learned APP appears for the State of Gujarat. I have heard the arguments advanced on behalf of the parties and I have perused the papers shown to me.

8. It is not much in dispute that the chargesheet was filed and charge was framed against the petitioner and other accused persons by the learned Additional Sessions Judge of the City Sessions Judge at Ahmedabad. It is not in dispute that the said sessions case was placed before the learned Additional Sessions Judge of that Court for trial. It is not much in dispute that the learned Additional Sessions Judge to whom the matter has been assigned for trial has not framed the charge. Therefore, it is an admitted position that petitioner had applied for assigning the said Sessions Case No. 77/2000 to the learned Additional Sessions Judge, who had framed the charge and that application was turned down by the learned Sessions Judge. The learned advocate appearing on behalf of the petitioner has argued the matter at a great length. She has taken me through various provisions of the code. It has been contended by her that the learned Additional Sessions Judge has framed the charged and when the charge is framed, trial is commenced and when the trial commences, then, the Sessions Judge has no power to transfer a sessions case from one Additional Sessions Judge to another Additional Sessions Judge of that Sessions Division. On that aspect of the case, there are various decisions rendered by this Court to the effect that the trial commences at the stage of framing of charge and thereafter, the Sessions Judge could not transfer the sessions case from one Additional Sessions Judge to another Additional Sessions Judge of that Sessions Division. She has therefore, contended

that in that view of the aforesaid legal position, the learned Sessions Judge ought to have assigned the aforesaid sessions Case No. 77/2000 to the learned Additional Sessions Judge, who had framed the charge. It is also her contention that the learned Sessions Judge could not have assigned the said Sessions case to another Additional Sessions Judge of that Sessions Division.

9. In order to appreciate the aforesaid arguments advanced by Ms. Shilpa Unwala, learned advocate appearing for the petitioner, it would be necessary to refer to the provisions made in Section 409 of the Code. It would be worthwhile to refer the said provision for ready reference as follows :-

> "(1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to any Assistant Sessions Judge or Chief Judicial Magistrate subordinate to him.
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> (2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.
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> (3) Where a Sessions Judge withdraws or recalls a case of appeal under subsection (1) or subsection (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be.

10. Ms. Unwala has particularly emphasized on Subsection 2 of Section 409 of the Code. From the said section it is clear that at any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge.

11. With respect to the aforesaid provisions of Sub-section 2 of Section 409 of the Code, it has been argued by Ms. Unwala that a power of transfer can be exercised by the Sessions Judge for transfer of a trial of sessions case from one Additional Sessions Judge to another Additional Sessions Judge of that Sessions Division only before the trial commence. It is also her argument that once the charge is framed, trial commenced and once the trial commenced, the power to transfer the

sessions case from one Additional Sessions Judge to another Additional City Sessions Judge cannot be exercised and in fact, the learned Sessions Judge has no power or jurisdiction to transfer any such case in which, the trial has commenced.

12. In support of the said contentions, learned advocate for the petitioner has relied upon three decisions of this Court. The first decision relied upon by Ms. Unwala has been rendered by this Court in case of MUSA MAHAMMAD MALEK & ANR. VS. STATE OF GUJARAT, reported in 1995(1) GLR, P.845.. In the aforesaid matter, this Court has considered the provisions made in Section 409 of the Code and after referring to the provisions made in sub-section 1 of the Section 409 of the Code, this Court (Coram : K.R. Vyas, J.) has observed in para 5 as follows :-

"Subsection (1) of Section 409 empowers a Sessions Judge to withdraw any case or appeal from, or recall any case or appeal which he has made over to any Assistant Judge or Chief Judicial Magistrate subordinate to him. However, reading sub-section 2 of Section 409, it becomes abundantly clear that the Sessions Judge is empower to recall any case or appeal, which he has made over to any Additional Sessions Judge, only before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge. In other words, at any time before commencement of trial of a case, hearing of an appeal before the Additional Sessions Judge, power to withdraw or recall any case or appeal is versted in the Sessions Judge. However, after commencement of the trial of a case or hearing of an appeal, such a power is not left with the Sessions Judge. In this case, it is not in dispute that the charge has already been framed by the third Additional Sessions Judge on an application directing the investigating agency to produce certain evidence. That order has also been partly complied with. Therefore, in the present case, the trial had already commenced when the charge was framed. It was, therefore, not open to the Sessions Judge to withdraw the said case from the file of third Additional Sessions Judge and to make over the same to Additional Sessions Judge. The Supreme Court in Ratilal Bhamji Mithani Vs. State of Maharashtra AIR 1979 SC 94 has held that the trial in a warrant case starts with the framing

of charge; prior to it, the proceedings are only an inquiry. Therefore, exercise of power under Section 409 of the Code by a Sessions Judge after the commencement of the trial is not permissible. In this case, as the trial had already commenced with the framing of charge, the learned Sessions Judge had thereafter, no power or authority under Section 409 of the Code to recall the case from the file of the third Additional Sessions Judge.

13. Thereafter, after referring to a decision of Manoj Majmudar Vs. State of West Bengal, 1984, Cri. L.J. 28, learned Single Judge of this High Court (Coram : K. R. Vyas, J.) has observed that the learned Sessions Judge, was not right in the present case in recalling Sessions Case No. 45 of 1993 from the 3rd Additional Sessions Judge after the trial commenced therein and transferring the same to the Additional Sessions Judge. The said judgement was rendered by this Court on 12.12.1994.

14. The second decision relied upon by Ms. Unwala can be gathered from Misc. Criminal Application No. 463 of 1996 in case of YUNUSBEG AHMEDBEG MIRZA VS. STATE OF GUJARAT, the said matter also relates to transfer of Sessions case from one Additional Sessions Judge to another Additional Sessions Judge after framing of charge. It appears from the copy of the judgement of this matter, that one sessions case being sessions case No. 107/95, was ordered to be transferred by the learned Sessions Judge of the Sessions Division at Vadodara from the court of one Additional Sessions Judge to the Court of another Additional Sessions Judge of that Sessions Division. Same way, another sessions case No. 1134/95 was also transferred accordingly.

15. When the matter was taken up before this Court by way of the Misc. Criminal Application No. 463/96, this Court (Coram : S.D. Dave, J.) considered the provisions made in Section 409 (2) of the Code and after examining the said provision, came to a conclusion that when the charge was framed, it was not open to the learned Sessions Judge to transfer the said sessions case from one Additional Sessions Judge to another Additional Sessions Judge.

16. Learned Judge of this Court has observed in that decision that if the learned Sessions Judge wanted to recall the said two sessions cases pending on the file of the learned Additional Sessions Judge with a view to see that they are made over to some other learned Additional

Sessions Judge, the prerequisite condition was that the trial should not have commenced. This is especially so because the charge has been framed. The plea of the accused persons have been recorded and there has been the issuance of the summons to the prosecution witnesses also. This all would go to show eloquently and without any manner of doubt that, when the said orders came to be passed, the trial in respect of both the sessions cases had commenced. It is therefore, clear that under Section 409(2) of the Code, also, this exercise could not have been done. The aforesaid decision was rendered by this Court on 26/4/1996.

17. Then we can turn to the third decision of this Court. It has been incidentally recorded in the case of GAMBHIRSING BHAVSINHJI PADHERIYA VS. STATE OF GUJARAT, reported in 1993(1)GLH P.433. Almost similar principles had been enunciated in the said decision (Coram : A.N. Divecha,J.) and the said decision has been rendered on 11.2.1993. In para 13 of the said judgement, the learned Single Judge of this Court clearly observed that the learned Sessions Judge, named Shri V.C. Mandalia, was not shown to be divested of the powers to conduct cases under the Act. In that view of the matter, the learned Sessions Judge could not have withdrawn the sessions case in question from the file of the leaned Additional Sessions Judge, named Shri V.C. Mandalia.

18. Thereafter, she has also relied upon decision of the Hon'ble Supreme Court in the case of RATILAL BHANJI MITHANI VS. STATE OF MAHARASHTA, reported in 1979 Cri. L.J. Page 41. It has been observed in para 26 of the said decision that the trial in a warrant case starts with the framing of charge, prior to it, the proceedings are only an inquiry.

19. So, on one hand, the Hon'ble Supreme Court has clearly observed that in warrant case, the trial commenced from the stage of framing of charge and on the other hand, the aforesaid three decisions rendered by this Court on 11.2.1993, 12.7.1994 and 26.4.1996 clearly show that once the charge is framed, trial commences and once the trial commences, the Sessions Judge has no authority to transfer a sessions case from one Additional Sessions Judge to another Additional Sessions Judge, in view of embargo placed in Subsection 2 of Section 409 of the Code.

20. On the strength of the aforesaid decisions, Ms. Unwala, learned advocate for petitioner has argued that the learned Sessions Judge could not transfer the said

matter from one Additional City Sessions Judge to another Additional City Sessions Judge in view of the provisions made in Subsection 2 of the Section 409 of the Code as has been discussed at length by three decisions of this Court referred to hereinabove. It is therefore, argued that when the learned Sessions Judge had no authority to transfer the said part heard sessions case from one Additional Sessions Judge to another Additional Sessions Judge. Therefore, the impugned order of the learned Sessions Judge is according to her arguments, illegal and therefore, as she argue , it is required to be interfered with in this Criminal Revision Application.

21. At the same time, it would also be worthwhile to refer to a decision of the Hon'ble Supreme Court in case of STATE OF KARNATAKA VS. KAPPURSWAMY GOWNDER, reported in 1987 Cri. L.J. P. 1075 (= AIR 1987 SC 1354). Para 10 of the said decision may be reproduced for ready reference hereinbelow :-

"It is not disputed that the Metropolitan Area Banglore City has a Sessions Division and is presided over by a Principal Sessions Judge and has a number of Additional Sessions Judges. It is also not disputed that all the Sessions Judges sitting in this Division are notified as Sessions Judges for the Division and therefore, it is also not disputed that all of them have jurisdiction to try a case arising out of the Sessions Division. Even the judgement of the High Court does not indicate any lack of inherent jurisdiction. What has weight with the High Court is that as the charge was framed by the II Additional Sessions Judge the case could not be transferred to the board of III Additional City Civil and Sessions Judge without an order of transfer by the High court as it was observed that under S. 194 the case could not be withdrawn by the Principal Sessions Judge after the commencement of the trial and this was inferred from the provisions contained in S.409, Cl. (2) Section 194 reads as under :

"Additional and Assistant Sessions Judges to try cases made over to them :- An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the Division may be general or special order, make over to him for trial or as the High Court may, by special order, direct him to try."

22. On going to Para 13 of the said judgment, we can find an observation of the Hon'ble Supreme Court that only, objection which has prevailed with the High court is that as charge was framed and plea was recorded by the II Additional City Civil & Sessions Judge, it could not be have been withdrawn by the Principal Sessions Judge and made over to III Additional City Civil & Sessions Judge. It is not disputed that it was withdrawn and made over. In this view of the matte, therefore, the provisions contained in S. 465 are found to be important to some extent by the Hon'ble Supreme Court.

23. The Hon'ble Supreme Court considered the provisions made in Sections 462 and 465 of the Code and found that where there is no inherent lack of jurisdiction merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure, an order or sentence awarded by a competent court cannot be set aside unless a prejudice is pleaded and proved which will mean failure of justice. However, in absence of such a plea, merely on such technical ground the order or sentence passed by a competent court could not be quashed.

24. The above observations made by the Hon'ble Supreme Court in the aforesaid decision are incidently relied upon by the learned advocates for both the parties.

25. On the other hand, learned APP has relied upon a decision of this Court in a case of BIPIN SHANTILAL PANCHAL VS. PRUTHVIRAJ @ ANIRUDHSINGH & ORS., reported in 1998(3) GLR, P.2383. It appears that as per the fact of the case narrated in para 5 of the judgement, Sessions Case No. 162/94 was notified for framing of charge on the cause list of Addl. City Sessions Judge, Court no. 15 at Ahmedabad.. That in the mean time, the petitioner of the aforesaid matter being Criminal Revision Application No. 472/97, had moved an application at Ex. 17 in the said proceedings under Section 319 of the Code praying that respondent no. 1 in the said Criminal Revisions Application alongwith on Amrutbhai Soni and Bimal Amrutlal Soni be summoned before the Court under Section 319 of the Code and be directed to face the same charges which may be framed against present petitioner of the aforesaid Criminal Revision Application.

26. It would be worthwhile to reproduce para 9 of the said decision for ready reference hereinbelow :-

" Shri R.K. Shah, learned Sr. Advocate appearing

for the petitioner has assailed the impugned order by contending :-

(a) that the impugned order is illegal and without jurisdiction in as much as, the transfer of the proceedings from the Court of Addl. City Sessions Judge, Ahmedabad, Court no. 14, after the framing of charge to the Court of Addl. City Sessions Judge, Ahmedabad, Court no. 10, is in violation of the provisions of S. 409(2) of the Code and settled proposition of law.

(b) That the impugned order is not contradictory to the previous order passed by learned Addl. City Sessions Judge, Ahmedabad Court no. 14, under Section 319(1) of the Code but in effect it amounts to revision of the same which is impermissible under the law.

(c) That the Court has erred in construing the scope of Sec. 227 of the Code and has exceeded the extent of permissible jurisdiction by considering the probative value of the evidence apparent from the material produced on the record.".

27. Learned Sr. Advocate appearing for the contesting respondent in the aforesaid revision application had supported the impugned order. During the course of the arguments in the matter, the decision of Musa Mahammad Malek & Anr. (Supra) as well as the decision of Ratilal Bhanji (Supra) were relied upon in the said matter.

28. The relevant consideration can be gathered from para 11 of the said Judgement and therefore, it would be necessary to refer it for ready reference hereinbelow :-

"That in the matter of Musa Mahammad Malek & Anr. Vs. State of Gujarat, reported vide 1995(1) GLR 845, this Court having relied on observations made in the case of Ratilal Bhanji Vs. State of Maharashtra, reported vide AIR 1979 SC 94, held that the trial in a warrant case starts with the framing of charge. That prior to it proceedings are only an inquiry. That thereby, the Sessions Judge has no power to withdraw thee proceedings from the subordinate Court to him after the

framing of the charge under Section 409(2) of the Code. However, in the instant case, it appears from the record that the proceedings of Sessions Case No. 162 of 1994 was posted in the cause list Court of Additional City Sessions Judge, Ahmedabad, Court no. 10 from the Court of Additional City Sessions Judge, Ahmedabad Court no. 14 on account of administrative order passed by learned City Sessions Judge and not under the provisions of Sec. 409(2) of the Code. It may be noted that as per the procedural practice followed at City Sessions Court, Ahmedabad under the provisions of Ahmedabad City Civil Court Rule 1961, the business of civil work as well as criminal work is being allotted to the Court of City Civil and Additional Sessions Judge by Principal Judge, who is also a City Sessions Judge, by rotation at periodical interval. That orders of allotment of sessions case to the Court of Additional City Sessions Judge, Ahmedabad does not amount to assign a case to a subordinate court by the Sessions Judge. That in the instant case as the Court of Addl. City Sessions Judge, Ahmedabad, Court no. 14, had competed the turn of criminal work and was assigned to the business and as such the proceedings of Sessions case No. 162 of 1994 was allotted to the Court of Addl. Sessions Judge, Ahmedabad Court no. 10, and thereby, it cannot be said to be a withdrawal of Sessions case within the meaning of Sec. 409(1) of the Code. In view of the said facts and circumstances, first submission advanced by learned Sr. Advocate Shri R.K. Shah on behalf of the petitioner cannot be merited to hold that transfer of proceedings of Sessions Case No. 162/94 being in violation of the provisions of Sec. 409(2) of the Code and the settled proposition of law, the impugned order is illegal and without jurisdiction."

It would be interesting to note that while dealing with the subject matter arising before the court in the aforesaid matter, this Court also considered the decision of State of Karnataka Vs. Muniswamy and Ors. (Supra).

29. Thus, it would be relevant, important and interesting to note that this Court in the aforesaid decision of Bipinchandra S. Panchal (Supra) has clearly observed in para - 11 that the order of allotment of sessions case to the Court of Additional City Sessions

Judge, Ahmedabad does not amount to assigning a case to a subordinate court by the Sessions Judge. The Court has further observed that a particular Additional Sessions Judge had completed his business of Criminal Side and when some other business has been assigned to him and as such the recording of evidence of sessions case has not been started and it was allotted to another Additional City Sessions Judge, Ahmedabad then, it cannot be said to be withdrawal of Sessions case within the meaning of Section 409(1) of the Code.

30. It is therefore clear that the aforesaid decision of this Court has clearly laiddown that the assignment of case to one Additional City Sessions Judge is not a transfer or allotment of case. It is also clearly laiddown in the aforesaid judgement that the transfer of business from one Additional City Sessions Judge to another Additional City Sessions Judge does not amount to transfer of session case from one Additional City Sessions Judge to another Additional City Sessions Judge.

31. Now, it is very clear that when this Court is required to consider the principles enunciated by two or more decisions, then the decision rendered by a bench consisting of larger number of judges will have to be preferred over the decision recorded by a bench consisting of lesser number of judges. Here we find that the leaned advocate for the petitioner has relied upon three decisions, which have been referred to above. All the three decisions have been rendered by the learned Single Judge of this Court.

32. On the other hand, learned APP has relied upon a decision of 1998(3) GLR 2383 (Supra). It has also been rendered by the learned Single Judge of this Court. Thus, it would mean that the four judgements referred by the respective parties, have been rendered by the learned Single Judge of this Court.

33. Then second principle is that when the different judgements have been rendered by the bench consisting of equal number of judges, in that event, the judgement rendered later in time, will have to be accepted in preference to the judgement rendered earlier.

34. In the present case, we find that first three decisions given by the learned Single Judges of this Court and relied upon by the learned advocate for the petitioner have been rendered on 14.12.1992, 12.12.1994 and 26.4.1996, whereas, the decision rendered in 1998(3) GLR P. 2383 (Supra) has been rendered by the learned

Single Judge of this Court on 3/4/5/.5.1998 in Criminal Revision Application No. 472/97.

35. This clearly means that the decision rendered by learned Single Judge (Coram : A.K. Trivedi, J.) is latest in time. In that view of the matter, considering the settled principle of law, it would be necessary for this Court to follow the decision rendered by the learned Single Judge of this Court on 3/4/5.5.1998 and reported in 1998(3) GLR 2383, since it is the latest pronouncement of this Court.

36. Once it is found that this Court is required to follow the principles enunciated in the decision rendered by the learned Single Judge of this Court and reported in 1998(3) GLR 2383, then it is clear that the assignment of business to the Additional Sessions Judge for the limited purpose of framing of charge is not a matter transferred to an Additional Sessions Judge and at the end of his tenure to work on criminal side, when he sends the unheard matters to the office then, it does not amount to withdrawal of the cases from his Court and therefore, when if the said matter is entrusted to another Additional Sessions Judge for trial according to law, then, it would not amount to transfer of sessions case from the said Additional City Sessions Judge to another Additional City Sessions Judge of the said City Sessions Court at Ahmedabad.

37. An attempt was made to argue on behalf of the petitioner that at the initial stage, the matter was transferred to Additional Sessions Judge for framing of charge only. It was therefore, contended that the Code nowhere provides for transfer of matter for limited purpose. It was contended that under Section 194 of the Code, an Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the division may, by general or special order, make over to him for trial or as the High Court may, by special order, direct him to try. On the strength of the provisions made in Section 194 of the Act, it was argued that at the initial stage the matter was transferred for limited purpose of framing of charge and that order was not legal since it could not be done. It was also submitted that the Sessions Judge, could transfer the matter only for the purpose of trial.

38. At no stage, the order of allotment of case for framing of charge has been challenged by the present petitioner at any point of time or even at the relevant point of time. This means that the original order of

referring the matter to the concerned Additional Sessions Judge for framing of charge stands as it is and since it has not been challenged, any way, this Court cannot observe anything about the said order and so long as that order stands, it would mean that the matter was entrusted only for the purpose of framing of charge. More over, it has to be considered that in fact, there was no order passed by the learned Sessions Judge for calling the aforesaid sessions case back. Admittedly, the position is that, as soon as the charge was framed, the matter was returned to the office by the learned Additional Sessions Judge concerned. It is found that this is a practice prevailing in the City Sessions Judge and it has been submitted that this practice has been since its inception i.e. from 1961. Therefore, in fact, there was no order passed by the learned Sessions Judge for withdrawing the said sessions case from the Court of an Additional Sessions Judge.

39. It is not the case of the petitioner that some prejudice has been caused or is likely to be caused to the petitioner. If, the order in question passed by the learned Sessions Judge is not set aside by this Court. Therefore, no injustice is likely to be caused if the said order of the learned Sessions Judge remains in existence.

40. An attempt was made to argue that the learned Sessions Judge would not have made over the sessions case to a particular Additional Sessions Judge for the purpose of framing of charge only. Since the said order has not been challenged at any point of time, it would not be proper at this stage to decide the legality of that order. More over, the said order or the copy thereof has not been produced on record and therefore, it is not possible to find out as to what was the order passed by the learned Sessions Judge at the relevant point of time for transfer of aforesaid sessions case to a particular Session Judge for the purpose of framing of charge only. As said above, there is no order recalling the said case back from the said Additional Sessions Judge. In other words, there is no order on record to show that the aforesaid sessions case was made over to a particular Additional Sessions Judge for framing of charge. There is also no order on record to show that the said sessions case was called back by the learned Additional Sessions Judge.

41. Learned APP has argued at length that there is no order for transfer of case from one Additional City Sessions Judge to another Additional City Sessions Judge

and no such order has been produced on record and therefore, the question of applicability of Section 409 of Code does not arise at all.

42. Even the learned Session Judge has also observed in para 7 of his judgement that as the matter is allotted only for limited purpose of framing charge to the respective learned Addl. Sessions Judges initially and when after framing of charge , generally the cases are returned by the respective learned Addl. Sessions Judges to the administrative office of the Court, it does not amount to recall of the cases from the file of the learned Addl. Sessions Judge. As the question of recall will arise only when before completion of the assigned task, the case is recalled from the file of the learned Addl. Sessions Judge. Learned Sessions Judge has also observed that recalling a case necessarily implied termination of the task assigned to the learned Addl. Sessions Judge.

43. It seems to be the practice prevailing in the City Sessions court at Ahmedabad that the ready sessions cases are sent to Additional Sessions Judge for framing of charge and as soon as the charge is framed, the concerned Additional Sessions Judge return the R & P to the office, so that the matter may remain ready and can be fixed for the purpose of recording evidence in order of seniority.

44. An attempt was made to make reference to the provisions made in the Ahmedabad City Court Act, 1961. However, it appears that the said Act mainly refers to the City Civil & Sessions Court at Ahmedabad in accordance with the provisions made in the Ahmedabad City Court Act, 1961.

45. So far the criminal side is concerned, Ahmedabad City area has been treated as City Sessions Division and then the provisions made in the Code will naturally apply to the Court of Additional Sessions Judges, working in this Sessions Division. Therefore, in above view of the matter, it is not useful to go into the provisions made in the Ahmedabad City Court Act, 1961.

46. Any way looking to the facts and circumstances of the case, and having regard to the three decisions of this Court referred and relied upon by Ms. Unwala, learned advocate for petitioner and having regard to the forth decision of this Court reported in 1998(3) GLR P.2383 (Supra), I am of the opinion that this Court while exercising revisional jurisdiction as a Single Judge, it

would be necessary for this Court to follow the principles laiddown in the decision of this Court rendered in May, 1998 by the learned Single Judge of this Court (Coram : A.K. Trivedi, J.) and reported in 1998(3) GLR P. 2383. (Supra).

47. It is more so when the previous three decisions relate to the Sessions division in other Sessions division of other district in the State, whereas, the decision reported in 1998(3) GLR P.2383 (supra) refers and relates to the City Sessions Court, Ahmedabad itself. It is true that there cannot be any difference between the City Sessions division and other Sessions division in the State, but the fact remains that while, deciding the aforesaid matter, reported in 1998(3) GLR P. 2383 (supra), this Court has specifically and particularly considered long standing practise prevailing in the City Sessions Court at Ahmedabad, therefore, the said practice is required to be properly considered in the present case and distinction can be made while appreciating the position of City Sessions Court as well as any other Sessions division in the City.

48. In above view of the matter, I am of the view that since this Court is bound by the aforesaid decision of this Court reported in 1998(3) GLR P. 2383 (supra), it is not open to take a different view once it is found that this Court is required to follow the latest decision of the learned Single Judge of this Court reported in 1998(3) GLR 2383, then, nothing is required to be done in this matter. The only alternative is to hold this revision petition to be merit less.

49. For the reasons stated above, it is clear that there is no merit in the present Revision Application and therefore, it is required to be dismissed. It is more so that the powers of this Court in revision are very limited and no injustice has been caused or no prejudice has been or likely to be caused on account of aforesaid order, to the petitioner and therefore, there is no reason to interfere with the order of the learned Sessions Judge.

50. In above view of the matter, this Criminal Revision Application is dismissed. Notice is discharged. Interim relief is vacated.

(D.P. Buch,J.)

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FURTHER ORDER :-

After the pronouncement of the aforesaid judgement, Ms. Shilpa Unwala, Ld. Advocate for petitioner states that since the petitioner desires to take up the matter to the higher forum, the final order of this Court may be continued for a period of six weeks from today. After hearing Mr. K.G. Sheth, Ld. APP for State, the interim relief granted earlier is ordered to be continued for a period of six weeks from today i.e. 1/5/2001. D.S. Permitted.

(D.P. Buch, J.)

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